

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SANDRA ROACH,

Plaintiff,

v.

CASE NO. 04-70971
HONORABLE PAUL D. BORMAN

SUR-FLO PLASTICS AND
ENGINEERING, INC.,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

On May 18, 2005, the Court entered an Opinion and Order Denying in part and Granting in Part Defendant's Motion for Summary Judgment. Defendant now asks this Court to reconsider its denial of summary judgment on Plaintiff's FMLA, ELCRA and COBRA claims.

Local Rule 7.1(g) governs motions for reconsideration, and states, *inter alia*:

[T]he court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.

L.R. 7.1(g)(3).

Upon consideration of the motion and the applicable law, the Court finds that Defendant has failed to demonstrate a "palpable defect" in the Court's May 18, 2005 order, pursuant to Local Rule 7.1(g)(3). The Court finds that Defendant's motion merely presents the same issues ruled upon by the Court in its May 18, 2005 Opinion.

Regarding Plaintiff's COBRA claim, the Court clarifies that its denial of summary

judgment was not based upon the premise that statutory damages under COBRA (which require a finding of bad faith) could not be adjudicated at the summary judgment stage as a matter of law, as Defendant contends. Rather, the Court exercised its discretion not to make a determination of bad faith at the summary judgment stage based upon the facts, viewed in a light most favorable to the non-moving party, the Plaintiff. The Sixth Circuit provides no preference that this issue be resolved at the summary judgment stage. Rather, district courts maintain wide discretion in resolving statutory damages under COBRA. *Holford v. Exhibit Design Consultants*, 218 F. Supp.2d 901, 908 (W.D. Mich. 2002).

Accordingly, the Court DENIES Defendant's Motion for Reconsideration.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: August 11, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on August 11, 2005.

s/Jonie Parker
Case Manager